ton, 27 Kan. 442; *Rogers* v. *Slonaker,* supra; *Hoke* v. *Henderson,* 4 Dev. (N. C.) 1; *State ex rel. Royse* v. *Kitsap County Superior Court,* 12 L. R. A. (N. S.) 1010. Many courts, however, support the contrary, and perhaps, more modern doctrine of the principal case as being more consistent with the fact that in our country no person, as a rule, is compelled to hold office. *United States* v. *Wright,* 1 McLean, 509; *People* v. *Porter,* 6 Cal. 26; *State* v. *Clark,* 3 Nev. 519; *State* v. *Mayor,* 4 Nebr. 260; *State* v. *Fiske,* 49 Ala. 402; *Bunting* v. *Willits,* 27 Gratt. 144; *Olmstead* v. *Dennis,* 77 N. Y. 378; *United States* v. *Justices,* 10 Fed. Rep. 460; *State* v. *House,* 43 Ind. 105; *Gilbert* v. *Luce,* 11 Barb. (N. Y.) 91; *Leech* v. *State,* 78 Ind. 570; *People* v. *Barnett,* 100 Ill. 332; *Rex.* v. *Mayor of Rippan,* 1 Lord Raym, 563; *City of Waycross* v. *Youmans,* 85 Ga. 708; See 6 MICH. LAW REV. 92.

REMOVAL OF CAUSES—FILING PETITION AND BOND IN STATE COURT—EFFECT.—Action by plaintiff for fifteen hundred dollars, amended by plaintiff to four thousand dollars, damages for trespass by defendant upon plaintiff's land. On petition by defendant for removal to the Federal Court, *held,* that, on filing a petition and bond in a state court for removal to a federal court, the jurisdiction of the state court ceases eo instante and it is the duty of the state court to proceed no further. *McCulloch et al.* v. *Southern Ry. Co. et al.* (1908), — N. C. —, 62 S. E. 1096.

The case was before this court at the fall term, 1907, 146 N. C. 316, 59 S. E. 882, on plaintiff's original complaint asking for fifteen hundred dollars damages, and being dismissed then plaintiff amended his complaint pursuant to the opinion and asked for four thousand dollars damages, which is above the statutory amount required for removal. The rule is that until some further judicial proceedings have taken place, showing upon the record that the sum demanded is not the matter in dispute, that sum is the matter in dispute in an action for damages. *Green* v. *Liter,* 8 Cranch 229; *Gordon* v. *Ogden,* 3 Pet. 33. After stating that defendant must file his petition for removal and therewith a bond, FOSTER'S FEDERAL PRACTICE, § 385, says, "it is then the duty of the state court to accept the petition and bond, if correct in form, and to proceed no further in the suit." To the same effect are *St. Paul & Chicago Railway Co.* v. *McLean,* 108 U. S. 212; *Kanouse* v. *Martin,* 15 How. 198, 14 L. Ed. 660; *Railroad* v. *Dunn,* 122 U. S. 513, 7 Sup. Ct. 1262, 30 L. Ed. 1159; *Marshall* v. *Holmes,* 141 U. S. 589, 12 Sup. Ct. 62, 35 L. Ed. 870. The mere filing of a petition for the removal of a suit, which is not removable, does not work a transfer. But a good removable case ceases eo instante in the state court on the filing of the petition and bond. *Stone* v. *S. Car.,* 117 U. S. 430, 6 Sup. Ct. 799, 29 L. Ed. 962. CLARK, C.J., dissented on the ground that the amended complaint did not state a cause of action against the defendant and therefore plaintiff was remitted to his original complaint asking for fifteen hundred dollars damages, which is below the statutory amount required for removal.

SALES—CONTRACTS—BREACHES—RIGHT OF ACTION—WAIVER.—Defendant contracted to furnish plaintiff 400 tons of ice, shipments to be delivered between certain dates as demanded by plaintiff. After weekly deliveries for

some time plaintiff demanded two cars per week, which request was not complied with. Still plaintiff continued to demand and receive and defendant to ship the ice in spite of fact that plaintiff had not paid for prior shipments, according to the contract. Plaintiff did not refuse to receive ice until after the time limited for making deliveries. *Held,* (TIMLIN, J., dissenting), that the right of the buyer to sue for damages from the delay in the shipments according to demand was not surrendered. *Anderson* v. *Savoy* (1908), — Wis. —, 118 N. W. 217.

A waiver is the voluntary and intentional relinquishment of a known right. 2 MECHEM, SALES, § 1071. The leading opinion in the principal case holds that plaintiff's conduct in receiving and defendant's consent to ship ice notwithstanding the delayed payments, are perfectly consistent with the plaintiff's retention of his right to damages for the delay in shipping according to his demand. The dissenting opinion does not sustain this view for two reasons. First, the ice was delivered as demanded. After one demand was not complied with other and different ones were substituted. As the orders were given orally by telephone it is a question of fact whether the parties understood the later mode of delivery to be satisfactory. Second, after the defendant's first refusal of one of plaintiff's demands there was thereafter a total breach of the contract. The plaintiff could not treat the contract as in force and also as broken. He elected the former and waived the breach. He cannot treat the repudiation both as a breach and as no breach at the same time. *Woodman* v. *Blue Grass L. Co.,* 125 Wis. 489. The two opinions in the principal case seem to turn on the views of the judges as to whether holding the contract as modified by mutual agreement still a binding contract was a conclusion of law or a conclusion of fact. As the changes were made verbally by telephone there seems to be strong reason in holding it a conclusion of fact. The substantial difference in principal between the two, however, is often shadowy, as shown in *Clark* v. *Chicago, M. & St. P. Ry. Co.,* 28 Minn. 69.

STREET RAILROADS—COLLISION WITH PERSON ON TRACK—CONTRIBUTORY NEGLIGENCE.—Plaintiff was riding with her husband, who was an experienced and competent driver, along a street in which was a street railway. She had nothing to do about driving the horse, and made no suggestion about the railroad track or cars, and neither assumed nor felt any responsibility for the management and control of the team, but deferred entirely to the judgment and experience of her husband. The team collided with a street car, the collision being caused partly by the contributory negligence of the husband, and as a result the wife sustained personal injuries. On motion to set aside a verdict in favor of plaintiff, *held,* that the jury did not commit a manifest error in finding that the wife was not justly chargeable with culpable negligence for failing to look or listen for an approaching car or for any other acts of omission or commission on her part connected with the drive. *Dennis* v. *Lewiston, B. & B. St. Ry. Co.* (1908), — Me. —, 70 Atl. 1047.

It was contended that the verdict in favor of the plaintiff should be set aside not because the negligence of the husband was legally imputable to her, that doctrine being expressly rejected in a previous decision of this court, but